

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

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Index #
Civil/No. 02/3650

NAZMI EREBARA,

Petitioner

-against-

KENNETH ELWOOD, District Director,
Immigration and Naturalization Service, and
JOHN ASHCROFT, Attorney General
United States of America,

MOTION TO AMEND
A PREVIOUSLY ISSUED
STAY OF DEPORTATION
AND FOR AN ORDER
RELEASING THE
PETITIONER FROM
INCARCERATION

Respondents

.....x

DAVID E. OLTARSH, hereby affirms as follows:

1. As attorney for the petitioner, I hereby move herein to amend the Order of this Court staying Mr. Erebara's deportation.
2. Mr. Erebara filed a petition for *Habeas Corpus* before this court on June 7, 2002 and Judge Mary A. McLaughlin issued a stay on that same date. That stay is attached hereto as Exhibit "A".
3. On or about July 26, 2002, Mr. Erebara, a native of former Yugoslavia in the region that is now Macedonia, moved to reopen his deportation hearing because recent events combined with his ethnic and religious background and his status as a long term resident of the US with US Citizen children put him in danger and at risk of severe persecution. Annexed hereto is a copy of his Motion to Reopen filed with the Board of Immigration Appeals as Exhibit "B".
4. When Mr. Erebara originally filed a claim for political asylum, he was unrepresented by counsel, and a translator was his sole means of understanding the forms, filling them out, and preparing for his contested Court hearing. Only when he filed a motion to reopen did an attorney

represent him, and this counsel was sorely inadequate; the motion itself on a form letter of general country conditions without any reference to Mr. Erebara himself. This motion could well have been filed for a multitude of individuals, totally lacking specific facts, the crux of any political asylum case. The Board of Immigration Appeals denied the Motion. As a result, Mr. Erebara's due process rights to properly have his claims heard were consequently denied as he was unable to meaningfully advise the court of his case; the adjudicating lower courts seemed unconcerned about ascertaining this potential political asylee's claim for relief.

5. We are herein seeking to amend the stay to cover the period of time all time that it takes the Board of Immigration Appeals to consider the motion and any appeals therefrom.
6. Mr. Erebara also urgently seeks herein an Order for his immediate release from incarceration, upon filing a suitable bond if determined to be necessary, and he previously filed an Order to Show Cause for his release on July 22, 2002. In as much as the motion to reopen presents another viable ground for relief, which is pertinent to the requested relief herein, we strenuously urge that he be released from custody pending the outcome of these proceedings.

WHEREFORE, we respectfully request that the stay be amended to include the awaiting of the determination of this Court, as well as the Executive Office of Immigration Review (EOIR), and the Board of Immigration Appeals (BIA).

Respectfully submitted,

Dated, August 5, 2002

OLTARSH & ASSOCIATES, P.C.

David E. Oltarsh